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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 3.10.2007.

Shinderpal Kaur and others

... Appellants.

vs

Parmar Construction Company, Branch Office 1478,
Sector 43-B, Chadigarh through its Managing Director.

.... Respondent

Coram Hon'ble Mr. Justice R.S.Madan.

Present: Mr.N.S.Bawa, Advocate, for the appellants.
None for the respondent.

Judgment

R.S.Madan, J.

This appeal is directed against the order dated 31.3.1997, passed by the Commissioner for Workmen's Compensation, Ropar, (for short, “the Commissioner”), vide which the claim petition of the appellants was dismissed.

The facts.

The legal heirs of Gulzar Singh deceased has filed an application for grant of compensation of Rs.5 lacs under Workmen's Compensation Act, 1923 (for short “the Act”) on account of death of Gulzar Singh on 28.5.1989, while driving the tractor of the respondent. The deceased was of 45 years of age and was drawing Rs.750/- per month as salary. The appellants- claimants requested the respondent time and again to pay the compensation but finally he refused to do so. Hence, they filed the claim petition.

Notice of the claim petition was given to the respondent-company. The respondent filed written statement and denied the relationship

of employee and employer between Gulzar Singh deceased and the respondent. It further denied the death of Gulzar Singh during the course of employment with the respondent. It was pleaded that the death certificate reflects that Gulzar Singh died at Kale Majra and not due to accident. With these pleas, the respondent prayed for dismissal of the application.

Replication was filed controverting the averments made in the written statement and reiterated the claim as set up in the application.

Parties went to the trial on the following issues:-

1. Whether the application is barred by time? OPR
2. Whether the accident arose in the course of employment?
3. Whether their existed employee employer relationship at the time of accident? OPA
4. Whether the applicants are entitled for compensation and penalty? OPA
5. Relief.

Both the parties adduced evidence in support of their respective case.

After evaluating the evidence led by the parties, the learned Commissioner decided issue no.1 in favour of the appellants holding the application to be within time. While disposing of issue no.2 and 3, the court observed that the appellants -claimants have failed to prove on the record the relationship of employee employer as well as that the accident has occurred during the course of or out of employment of the respondent, and decided these issues against the appellants. In pursuant to the observations made on issues no.2 and 3, the learned Commissioner dismissed the application for compensation filed by the appellants.

During the pendency of this appeal, an application under Order

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41 Rule 27 read with Section 151 CPC was filed by the appellants to place on the record attendance cards as Annexures P1 to P7. The said application was contested by the respondent by filing reply, wherein it was submitted that the documents sought to be produced by way of additional evidence are fake and bogus. These documents were not produced before the trial court at the time of leading evidence by the appellants. The claim petition remained pending for about seven years but the appellants have not taken any such steps. Therefore, the respondent sought dismissal of the application.

Heard.

It is contended by Mr.N.S.Bawa, learned counsel for the appellants that there is a statement of Rattan Singh Sarpanch, Gram Panchayat, Pirthipur Bunga (Ropar), who had categorically stated that Gulzar Singh son of Chanan Singh of Village Kale Majra, suffered death while driving Tractor No.HYE-2270. Rattan Singh also issued death certificate to the same effect. Learned counsel for the appellants further submitted that in view of the additional evidence produced on the record shows that Gulzar Singh was driving the tractor of respondent no.1 as is evident from Annexures P1 to P7.

The witnesses examined on behalf of the appellants have miserably failed to prove that Gulzar Singh was an employee of the respondent- company, except the certificate given by Rattan Singh. Annexures P1 to P7 show that Gulzar Singh was driver of tractor bearing no. PBK-1475 but the case of the appellants is that he died while driving tractor no.HYE-2270. The death certificate produced by the appellants also reflects that Gulzar Singh died while driving tractor HYE-2270. The appellants have miserably failed to prove on the record that tractor bearing

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No.HYE-2270 belongs to the respondent. Therefore, the additional evidence sought to be produced totally negates the case of the appellants as set up before the trial court as well as before this court. They have also not examined any employee of the company to prove the relationship of employee employer between deceased Gulzar Singh and the respondent-company.

In view of the above, I see no ground to interfere in the impugned order. The appeal is accordingly dismissed.

3.10.2007. (R.S.Madan)
vs. Judge.